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8 Attorneys for Defendant APPLE INC.

13 UNITED STATES DISTRICT COURT  
14  
15  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
17  
18 OAKLAND DIVISION

19 EPIC GAMES, INC.,

20 Plaintiff, Counter-  
21 defendant

22 v.

23 APPLE INC.,

24 Defendant,  
25 Counterclaimant.

26 Case No. 4:20-cv-05640-YGR-TSH

27  
28 **DECLARATION OF RACHEL S. BRASS IN  
SUPPORT OF DEFENDANT APPLE INC.'S  
MOTION TO PARTIALLY SEAL  
PORTIONS OF THE PARTIES' TRIAL  
EXHIBITS AND LIVE TRIAL TESTIMONY  
RELATED THERETO**

1 I hereby declare as follows:

2       1. I am an attorney licensed to practice in the State of California, and a member of the Bar  
 3 of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record for  
 4 Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary  
 5 and confidential information, based on my personal experience representing Apple.<sup>1</sup> I have personal  
 6 knowledge of the facts stated below and, if called as a witness, I could and would testify competently  
 7 thereto. I submit this declaration in support of Apple’s Motion to Partially Seal Portions of Trial  
 8 Exhibits and Live Trial Testimony Related Thereto.

9       2. When a party seeks to seal records for use at trial, there is a “strong presumption in favor  
 10 of access” that can be overcome only by “compelling reasons.” *Kamakana v. City & County of*  
*Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quotation marks omitted). The party seeking to seal  
 11 the document or proceedings must “articulate compelling reasons supported by specific factual findings  
 12 that outweigh the general history of access and the public policies favoring disclosure.” *Id.* at 1178–  
 13 79 (alteration, citation, and quotation marks omitted). “In general, ‘compelling reasons’ sufficient to  
 14 outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court  
 15 files might have become a vehicle for improper purposes,’ such as the use of records to gratify private  
 16 spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179  
 17 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

18       3. Apple operates in an intensely competitive marketplace. It occupies a unique position  
 19 as a leader with respect to a number of highly dynamic technologies. Apple has serious and legitimate  
 20 concerns that competitors will be quick to pounce on any release of Apple’s highly sensitive,  
 21 proprietary information in order to gain competitive advantage. As such, Apple takes extensive  
 22 measures to protect the confidentiality of its proprietary information.

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25       1 Courts in this District routinely grant motions to seal on the basis of declarations of counsel. See,  
 26 e.g., *In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S.*  
*Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco*  
*Sys., Inc., et al. v. Opentv Inc., et al.*, No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am  
 27 personally familiar with Apple’s safeguarding of proprietary information, but if the Court deems  
 28 this declaration insufficient, Apple respectfully requests that it be permitted to file a further  
 declaration supporting filing under seal.

1       4.     The Court has “broad latitude” “to prevent disclosure of materials for many types of  
 2 information, including, *but not limited to*, trade secrets or other confidential research, development, or  
 3 commercial information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002)  
 4 (emphasis in original).

5       5.     The Court has expressed a desire for these proceedings to be public. To that end, Apple  
 6 has carefully reviewed its depositions designations and now proposes only those redactions that are  
 7 essential.

8       6.     Specifically, Apple seeks only to seal information from four categories of confidential  
 9 information: 1) non-public financial information, 2) information that could aid a bad actor, 3)  
 10 competitively sensitive information and 4) third-party information entrusted to Apple.

11      7.     Apple expects that only those documents for which either Trystan Kosmynka or  
 12 Matthew Fischer is listed as the sponsoring witness are likely to be introduced during the first week of  
 13 trial. Those documents are indicated by an asterisk in the charts below.

14                   **CATEGORY 1 – APPLE NON-PUBLIC FINANCIAL INFORMATION**

15      8.     Apple first seeks to seal non-public financial information. The information Apple seeks  
 16 to protect is foundational to its business, and Apple has exerted great effort and undertaken substantial  
 17 expense to protect such information. Apple has narrowly tailored its sealing request so as to maximize  
 18 the public’s access to court proceedings without jeopardizing Apple’s business interests.

19      9.     Below is a chart detailing the specific potential trial exhibits that are sealable under this  
 20 category for the reasons explained herein.

21 <b>Document 22     Sought to be Sealed</b>	23 <b>Document Title</b>	24 <b>Reason to Seal</b>
25 26 27 28                   DX-5338	29                   Apple transactional data produced via hard drive	30                   This document is natively produced, non-public transactional data for Apple. The data provides detailed, competitively, sensitive, and confidential information about virtually every aspect of the App Store. Most critical here, it provides information about historical revenues from each

Document Sought to be Sealed	Document Title	Reason to Seal
		developer in the App Store, as well as transaction by transaction data. This data could potentially be used not just by competitors of Apple, but also by competitors of the many, many developers whose information is implicated in this dataset. This data represents the core of Apple's confidential information about the App Store, and also the core of what developers expect will be maintained in confidence when they join the App Store.
PX-2306	Transactional data produced via hard drive (not required to be exchanged between the parties pursuant to the Stipulation and [Proposed] Order Regarding Pretrial Schedule)	This document is natively produced, non-public transactional data for Apple. The data provides detailed, competitively, sensitive, and confidential information about virtually every aspect of the App Store. Most critical here, it provides information about historical revenues from each developer in the App Store, as well as transaction by transaction data. This data could potentially be used not just by competitors of Apple, but also by competitors of the many, many developers whose information is implicated in this dataset. This data represents the core of Apple's confidential information about the App Store, and also the core of what developers expect will be maintained in confidence when they join the App Store.
PX-0092	7/30/2020 Apple Inc. WW App Store Gross Margin	This document includes non-public, unaudited, and competitively sensitive financial data for the App Store covering the period through Q2 FY 2020.

Document Sought to be Sealed	Document Title	Reason to Seal
*PX-0414 <sup>2</sup>	9/2/2019 Email regarding Re: Search Ads Q4 FY19 Flash Report - August 23 to 29 with attachment(s)	This document includes detailed, non-public information about Apple's Search Ads feature, which is at best tangential to the issues being litigated in this case. This includes confidential and competitively sensitive future-looking information.
DX-3323	Presentation titled "Business Overview"	This document is a slide deck providing a business overview of the App Store. The document contains non-public and competitively sensitive financial information about the App Store, including the number of paying accounts and total billings by region. The document also contains confidential information about potential changes to and new features for the App Store, as well as critical analyses of the existing design of the App Store.
DX-4611	Spreadsheet titled "Apple Inc. US Sales, iPhone, IPad, and IPod Touch, Q4FY2008-Q4FY2019"	This document contains non-public, detailed sales data and financial information data for the iPhone, iPad, and iPod Touch through FY 2019.
PX-0432	8/12/2020 iTunes WW P&L_Q4FY08-Q3FY20.xlsx	This document includes non-public detailed financial data for iTunes through Q3 FY 2020.
PX-0603	8/12/2020 App Store Marketing OPEX Q1FY15-Q4FY20.xlsx	This document is an Excel file containing detailed non-public marketing costs associated with the App Store including for Q4 FY 2020.

<sup>2</sup> PX-0414 is included in the parties' April 27, 2021 Stipulation and [Proposed] Order Regarding Admissibility of Documents Submitted with Four-Hour Deposition (Dkt. 498).

Document Sought to be Sealed	Document Title	Reason to Seal
PX-0604	11/13/2020 WW Developer Relations OCOGS Q1FY15-Q4FY20.xlsx	This document is an Excel file containing detailed non-public and competitively sensitive information regarding certain developer relations costs associated with the App Store, including for Q4 FY 2020.
PX-0605	11/13/2020 WW Developer Relations OPEX Q1FY15-Q4FY20.xlsx	This document is an Excel file containing detailed non-public and competitively sensitive information regarding certain developer relations costs associated with the App Store for the period through Q4 FY 2020.
PX-0606	7/8/2020 Apple Inc. Line of Business Report - iPhone	This document is an excel spreadsheet showing non-public, unaudited, competitively sensitive financial information for various lines of business at Apple through Q1 of 2020.
PX-0607	9/21/2020 iTunes WW P&L_Q4FY08-Q3FY20 - Source Data Included.xlsx	This document is an Excel file setting forth several categories of non-public financial information related to iTunes for the period through Q3 FY 2020.
PX-0611	7/29/2020 WW App Store Gross Margin	This document includes non-public financial data for the App Store through Q2 FY 2020. These figures are not made public, have not been audited, and do not necessarily reflect all costs associated with the App Store.
*PX-2171	8/13/2019 FY20 App Store Budget Master.key	This document is an August 2019 slide deck that includes confidential business information and non-public financial information. The document includes billing revenues, including forecasts, for the App Store, as well as subscription data

Document Sought to be Sealed	Document Title	Reason to Seal
		for different categories of apps. The document discusses confidential and competitively sensitive future-looking business plans for growth, and detailed financial projections.
PX-2363	1/23/2020 Email regarding FQ1'20 Earnings Update - Installed Base with attachment(s)	This document is a January 2020 email chain containing specific, competitively sensitive, and non-public financial information. <sup>3</sup>
PX-2385	10/1/2019 Email regarding Profitability - Follow ups with attachment(s)	This document is an October 2019 email chain and related slide deck containing specific data regarding the profitability of various Apple products and services.
PX-2391	12/18/2019 FY20 LRF - Dec'19	This document is a December 2019 slide deck containing competitively sensitive, non-public financial information and forecasts.
PX-2392	2/10/2021 FY19/20 Profitability	This document is a September 2019 slide deck reflecting confidential financial information, including data regarding operating margins and revenue growth.
PX-0602	12/13/2019 2019 App Store Budget & Headcount - MASTER.key	This document is a slide deck that includes confidential business information and nonpublic financial information. The document includes billing revenues, including forecasts, for the App Store, as well as information about the number of subscribers for the top apps. The document includes revenue information for some of Apple's top apps (including <i>Fortnite</i> ), and discusses confidential business

<sup>3</sup> This document is also sealable for the reasons described in Category 3 – Competitively Sensitive Information.

Document Sought to be Sealed	Document Title	Reason to Seal
		plans for growth. The document discusses several concepts from improving certain features of the App Store, as well as projected revenues for certain monetized features. The document also sets forth in detail the projected revenue for the App Store, broken down by region.
PX-0608	10/8/2019 01_Business Management FY20 Overview_Not Shared.key	This document is a slide deck providing a business management overview of the App Store for fiscal year 2020. The document includes figures showing the total billings for the App Store, as well as customer spending in the United States across several of Apple's products. The document shows revenue broken down by geography and app type. The document includes a comparison of forecasted billings to actual billings, and discusses actual and projected revenue growth at the App Store. The document also discusses future opportunities for growing the App Store, including confidential information about future product enhancements.
DX-3122	Workbook with three spreadsheets titled in part "Apple Inc.: Apple Media Products"	The entire document should be sealed as reflecting non-public financial information about payment processing fees, implicating non-public rates charged by third-party payment processors.
*DX-3446	iOS Apps Reviewed Summary – January 29, 2020	The entire document should be sealed because it reflects recent non-public financial and marketing data.

Document Sought to be Sealed	Document Title	Reason to Seal
DX-3911	Spreadsheet titled “Apple Inc. Line of Business Reports” for various products	The entire document should be sealed as reflecting non-public Apple financial data.
DX-4199	Spreadsheet titled “US sales: iPhone, iPad, and iPod Touch: Q4FY208-Q4FY2019”	The entire document should be sealed as reflecting non-public financial data concerning sales of Apple devices.
*PX-0413 <sup>4</sup>	11/14/2020 Email regarding Search Ads Q1 FY21 Flash Report - November 6 to November 12 with attachment(s)	This document from November 2020 provides detailed, non-public financial information about Apple’s Search Ads feature. The document discusses in detail the revenues from Search Ads across several different categories, and includes an assessment of future growth. The document also includes charts which breakdown revenue from Search Ads in 2020 by region and by categories, and shows the “Top Spenders” for Search Ads, as well as other categories that include developer-specific financial information.
PX-2302	8/4/2020 200803 FY21 App Store Budget Draft.key	This document is a recent slide deck that includes confidential business information and nonpublic financial information. The document contains billing revenues, including forecasts, for the App Store. It also contains business sensitive data regarding advertising spending and revenues. And it also sets forth in detail the projected revenue for the App Store, broken down by region.

<sup>4</sup> PX-0413 is included in the parties’ April 27, 2021 Stipulation and [Proposed] Order Regarding Admissibility of Documents Submitted with Four-Hour Deposition (Dkt. 498).

Document Sought to be Sealed	Document Title	Reason to Seal
PX-0612	7/8/2020 Line of Business Report	The entire document should be sealed because it reflects non-public financial information.
PX-2165	9/6/2018 App Store Presentation	The document should be sealed because it reflects non-public financial information.
PX-2167	9/25/2018 App Store Presentation	The document should be sealed because it reflects non-public financial information.
PX-2168	9/26/2019 App Store Presentation	The document should be sealed because it reflects non-public financial information regarding Apple's financial performance.
PX-2364	5/26/2020 Email regarding Kantar Smartphone KPI Report for US and China with attachment(s)	The entire document should be sealed because it reflects non-public financial information.
*PX-2366	9/18/2020 Email regarding Search Ads Q4 FY20 Flash Report - September 11 to September 17 with attachment(s)	The entire document should be sealed because it reflects non-public financial information.
PX-2369	8/5/2019 Email regarding Q4'19 M1 Final Fcst P&L Package with attachment(s).	The entire document should be sealed because it reflects non-public financial information and competitively sensitive financial forecasts. <sup>5</sup>
PX-2382	4/20/2020 Email regarding RE: [EXTERNAL] Re: Multiple Binary Approach with attachment(s)	The entire document should be sealed because it reflects non-public financial information and competitively sensitive financial forecasts. <sup>6</sup>

<sup>5</sup> This document is also sealable for the reasons described in Category 3 – Competitively Sensitive Information.

<sup>6</sup> This document is also sealable for the reasons described in Category 3 – Competitively Sensitive Information.

<b>Document Sought to be Sealed</b>	<b>Document Title</b>	<b>Reason to Seal</b>
PX-2928	ECA FY'20 Q1	The entire document should be sealed because it reflects non-public financial information.

#### **CATEGORY 2 – SENSITIVE SECURITY INFORMATION**

10. Second, Apple respectfully requests that the Court seal the identified information that could aid a bad actor. Specifically, Apple seeks to seal specific information about Apple’s security policies and internal processes like Apple’s App Review process.

11. Public disclosure of this information would risk providing assistance to competitors and third parties seeking to unlawfully access or steal data. Apple takes many steps, and undertakes substantial efforts, to safeguard information—including its trade secrets and private confidential data of its customers and developers—and keeping those efforts confidential is important to their effectiveness.

12. Not only does Apple protect critical information through its internal security systems and processes, Apple also protects users and developers alike from fraud, malware, and unwarranted intrusion into their privacy through its extensive App Review Process. Disclosure of the identified information would allow bad actors to circumvent Apple’s important review process and would endanger users and developers.

13. Below is a chart detailing the specific potential trial exhibits that are sealable under this category for the reasons explained herein.

<b>Document Sought to be Sealed</b>	<b>Document Title</b>	<b>Reason to Seal</b>
*PX-2245	6/17/2019 Email regarding Re: Draft email to Phil	This document includes a discussion of Apple’s efforts to reverse engineer particular forms of software used by fraudsters, as well as an explanation of how these fraudulent methods work. The email also includes confidential and sensitive

Document Sought to be Sealed	Document Title	Reason to Seal
		information regarding potential technical solutions to curbing the effectiveness of such fraudulent software and the fraudsters who attempt to deploy it. The document also contains an explanation of a potential method to assist in defending against cheaters and hackers. Release of this information would potentially assist bad actors in avoiding Apple's efforts to maintain the security and privacy of its users.
*PX-2006	4/26/2019 Email regarding Re: <rdar://problem/14499172> TLF: User-installable fonts	This document is an internal discussion among the App Review team discussing the security implications of allowing developers to add certain features to their apps. The document discusses the technical details of such features and how they might be implemented in a manner consistent with Apple's security protocols. The document also includes a discussion regarding the privacy implications of the feature, including changes to the App Review process that may be needed in order to protect against abuse.
*PX-2090	2/2/2017 Email regarding Re: Coin Booster with attachment(s)	This document is an email exchange among members of Apple's App Review and security team regarding an app operating in violation of the App Store guidelines. The document includes highly confidential source

Document Sought to be Sealed	Document Title	Reason to Seal
		code for the third-party app, as well as a discussion of how to detect certain fraudulent app functions.
*DX-3685	2/2/2017 email regarding "Re: Coin Booster"	The entire document should be sealed because it reflects a method of hiding code in app review process and related discussion that could be exploited by bad actors.
*PX-2051	8/18/2018 Email regarding Re: Takedown request from MPS - August 14, 2018	The entire document should be sealed as reflecting information regarding how bad actors mask gambling apps, which could undermine security efforts if made public.
PX-2102	3/10/2017 Email regarding Re: Chinese News about fraud loss in iOS game with attachment(s)	The entire document should be sealed because it reflects non-public discussions concerning Apple's strategy to combat phishing attacks that could be exploited by a bad actor.
PX-2134	1/14/2020 Email regarding Re: App Review ConnectMe with attachment(s)	The entire document should be sealed because it reflects non-public discussions concerning Apple's app review process that could be exploited by a bad actor.
PX-2142	1/23/2019 Email regarding Re: AMP Commerce and Payments Schedule: January 21, 2019	The entire document should be sealed because it reflects confidential security information that could be exploited by a bad actor.
*PX-2174	6/5/2017 Email regarding Re: 414478124 WeChat update with attachment(s)	The document should be sealed because it reflects security information that could be exploited by a bad

Document Sought to be Sealed	Document Title	Reason to Seal
		actor. Specifically, source code reflecting security concerns should be redacted at pages 3-6 and 9-11.
*PX-2201	9/30/2015 Email regarding Columbus Deck with attachment(s)	The entire document should be sealed because it reflects dynamic analysis topics that App Review examines and could be exploited by a bad actor.
*PX-2248	1/12/2019 Email regarding Fraud Status - 2018-01-11 with attachment(s)	The entire document should be sealed because it reflects confidential security information that could be exploited by a bad actor.
PX-2297	8/21/2020 iMessage with attachment(s)	The entire document should be sealed because it reflects Apple's confidential security information that could be exploited by a bad actor.
*PX-2331	11/8/2017 Email regarding Re: Aliases for business management with attachment(s)	The entire document should be sealed because it reflects Apple's confidential security information that could be exploited by a bad actor.
*PX-2332	3/6/2020 Email regarding Monthly Update (February 2020): ASI Pruning Efforts with attachment(s)	The entire document should be sealed because it reflects Apple's confidential security information that could be exploited by a bad actor.
*PX-2336	7/24/2015 Email regarding Fwd: Intro with attachment(s)	This document reflects non-public communications with a third-party developer regarding a potential product launch. The document includes a detailed and extensive collection of proprietary, raw analysis by the developer showing the

Document Sought to be Sealed	Document Title	Reason to Seal
		operation of the developer's analysis engines. This information could be exploited by a competitor or bad actor. <sup>7</sup>
*PX-2075	7/23/2015 Email regarding Fwd: Intro with attachment(s)	This document reflects non-public communications with a third-party developer regarding a potential product launch. The document includes a detailed and extensive collection of proprietary, raw analysis by the developer showing the operation of the developer's analysis engines. This information could be relevant to a competitor. <sup>8</sup>
PX-2350	9/18/2020 Email regarding Re: \$634K for 480 user licenses of COMPANY??	The entire document should be sealed because it reflects Apple's confidential security information that could be exploited by a bad actor.
*PX-2387	8/21/2020 Email regarding Fwd: App Review Escalations Chart (Policy & Escalations (P&E) + Dev Services) with attachment(s)	The entire document should be sealed because it reflects security information in the form of exploitable business organization information that could be exploited by a bad actor.

### CATEGORY 3 – COMPETITIVELY SENSITIVE INFORMATION

14. Third, Apple seeks to seal competitively sensitive information including product information regarding plans to develop yet undisclosed new products which, if revealed would cause

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<sup>7</sup> This document is also sealable for the reasons described in Category 4 – Third-Party Confidential Information.

<sup>8</sup> This document is also sealable for the reasons described in Category 4 – Third-Party Confidential Information.

1 Apple economic harm and put it at a competitive disadvantage. Examples of documents which should  
 2 be sealed on these grounds are DX-4094, PX-0059, and PX-2168.

3       15. In addition to future product information, Apple also seeks to seal as competitively  
 4 sensitive certain market research reports which were either commissioned by or conducted by Apple  
 5 in order to gain a unique insight into consumer and developer preferences and thereby improve its  
 6 competitive standing.

7       16. Public disclosure of this information would risk competitors gaining an unfair business  
 8 advantage by benefiting from effort regarding product development that Apple intended to keep  
 9 confidential. Apple takes many steps, and undertakes substantial efforts, to safeguard information—  
 10 including its trade secrets—and keeping those efforts confidential is important to their effectiveness.

11       17. Below is a chart detailing the specific potential trial exhibits that are sealable under this  
 12 category for the reasons explained herein.

Document Sought to be Sealed	Document Title	Reason to Seal
DX-3479	Document titled “Games”, dated February 6, 2019	This document describes Apple’s competitive approach to the market for digital game transactions, including with respect to potential product enhancements or rollouts to improve the iOS experience, as well as strategic business acquisitions or partnerships. The document also sets forth competitively sensitive information about Apple’s approach to growing competition in the market. <sup>9</sup>
*DX-3516	Slide deck titled “BHU 27178, Video Partner Billing Project - Phase 1: SAP Design Playback,” dated May 28, 2019	This document contains details about the design and rollout of a new product. The document discusses the key design elements of the product, as well as testing protocols for the product. The document reflects proprietary, non-

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 28       <sup>9</sup> This document is also sealable for the reasons described in Category 1 – Non-public Financial  
 Information.

Document Sought to be Sealed	Document Title	Reason to Seal
		public information about Apple's business plans.
*DX-3820	Presentation titled "App Store Business Management Overview," July 2020	This document is slide deck containing competitively sensitive strategic analyses of the planned growth and development of the App Store, including past and projected revenues from various segments. The slides on pages 27–29 also contain confidential third-party information about the billings revenues associated with particular apps. Later slides reflect competitively sensitive information regarding potential new products and business opportunities for developers, and confidential analyses of the App Store's products and business model. <sup>10</sup>
*DX-4094	Presentation re "Update on how the next year is shaping up for the App Store"	This document is a slide deck regarding the business performance and outlook of the App Store. The document provides competitively sensitive non-public information about current and projected revenues for the App Store. It also discusses confidential upcoming non-public and future-looking information regarding business initiatives and product developments. The slide deck also includes detailed, non-public financial information about the App Store, broken down by region. <sup>11</sup>

<sup>10</sup> This document is also sealable for the reasons described in Category 1 – Non-public Financial Information and Category 4 – Third-Party Confidential Information.

<sup>11</sup> This document is also sealable for the reasons described in Category 1 – Non-Public Financial Information and Category 4 – Third-Party Confidential Information.

1 2 3 <b>Document Sought to be Sealed</b>	<b>Document Title</b>	<b>Reason to Seal</b>
4 5 6 7 8 9 10 11 *PX-0059	10/6/2019 FY20 App Store Budget Master - FINAL.key	12 This document is a slide deck for FY 2020 regarding the business performance and outlook of the App Store. The document provides non-public information about current and projected revenues for the App Store. It also discusses confidential and competitively sensitive information regarding upcoming business initiatives and product developments. The slide deck also includes detailed, non-public financial information. <sup>12</sup>
13 14 15 16 17 PX-0469	11/8/2020 iOSSystemReport_2020-10-30.pdf	18 This document is a slide deck from October 2020 that provides non-public information about iOS. In particular, the document provides confidential metrics regarding the usage of certain features on iOS and data about OS usage across Apple's userbase, as well as competitively sensitive information about usage of specific third-party apps offered for iOS.
19 20 21 22 23 24 25 26 27 *PX-2089	10/30/2018 Email regarding Fwd: Sync on Subscriptions with attachment(s)	28 This document sets forth analytics regarding certain features and products on the App Store, including Apple's competitively sensitive information about its approach to combatting fraudulent apps. The document also includes non-public financial information about customer spending through certain features of the App Store, as well as projected financial costs associated with the distribution of certain types of fraudulent apps.

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<sup>12</sup> This document is also sealable for the reasons described in Category 1 – Non-Public Financial Information and Category 4 – Third-Party Confidential Information.

Document Sought to be Sealed	Document Title	Reason to Seal
*PX-2367	9/23/2020 Email regarding Consumer Services Overview: 2020-09-22 with attachment(s)	This document is a detailed table containing competitively sensitive data regarding billings and subscriptions, broken down by country. <sup>13</sup>
DX-3174	Presentation titled “iPhone Owner Study: Australia, China, France, Germany, Japan, India, UK, US,” dated October, 2020	The entire document should be sealed as reflecting competitively sensitive market research.
DX-3377	Apple Settlement Agreement with an Individual	This document is a settlement agreement and release with a former employee of Apple. The document implicates the interests and rights of a third-party former employee.
*DX-3381	Document titled “9th Annual App Store Leadership Summit Notes”	The entire document should be sealed as reflecting financial information or competitively sensitive information.
*DX-3447	Presentation titled “Apple App Store Brand Health Tracking, Top Line Report”	The entire document should be sealed as reflecting competitively sensitive market research.
DX-3465	Presentation titled “iPad Buyer Survey” FY19-Q1 Report - US, UK, France, Germany, China, Japan, Mexico, India, Thailand, and Russia	The entire document should be sealed as reflecting competitively sensitive market research.
DX-3773	Presentation titled “iPhone Buyer FY20-Q4 Apple and Other Product Ownership”	The entire document should be sealed as reflecting competitively sensitive market research.
*DX-3896	Slide deck titled “Kantar ComTech Smartphone KPIs: CQ1’10 USA and Urban China,” dated May 2020	The entire document should be sealed as reflecting competitively sensitive market research.

<sup>13</sup> This document is also sealable for the reasons described in Category 1 – Non-Public Financial Information.

Document Sought to be Sealed	Document Title	Reason to Seal
DX-4089	Presentation titled “iPhone Buyer Survey FY19-Q3 Global Report”	The entire document should be sealed as reflecting competitively sensitive market research.
DX-4149	Workbook with two spreadsheets titled in part “Kantar ComTech USA”	The entire document should be sealed as reflecting competitively sensitive market research.
*DX-4214	Slide deck titled “iOS Apps Reviewed Summary,” dated March 11, 2020	The entire document should be sealed as reflecting competitively sensitive information concerning App Review.
DX-4312	Presentation titled “iPhone Buyer Survey FY20-Q1 Global Report”	The entire document should be sealed as reflecting competitively sensitive market research.
DX-4495	Presentation titled “iPhone Buyer FY20-Q2 Global Report”	The entire document should be sealed as reflecting competitively sensitive market research.
*DX-3137	Presentation titled “Agenda: Business Update, FY’19 Focus Areas, Financials, Resources”	The entire document should be sealed as reflecting competitively sensitive market research and analysis. In addition, the document contains non-public, non-public financial data. <sup>14</sup>
*DX-3789	Presentation titled “Apple Arcade, Worldwide Pricing”	The entire document should be sealed as reflecting competitively sensitive market analysis and forward-looking pricing strategy for Apple Arcade. <sup>15</sup>
*DX-4178	Presentation titled “Kick off Services with an update on the App store”	The document should be sealed because it contains competitively sensitive business strategy for the

<sup>14</sup> This document is also sealable for the reasons described in Category 1 – Non-public Financial Information.

<sup>15</sup> This document is also sealable for the reasons described in Category 1 – Non-public Financial Information.

(Cont'd on next page)

Document Sought to be Sealed	Document Title	Reason to Seal
		App Store, including non-public financial information as well as third-party revenue data. Specifically, the following pages should be redacted: .003-.009, .012-.015, .038, .046, .049-.052, .054, .057, .059-.060. <sup>16</sup>
*PX-0314	6/30/2020 EC SESSION ON APPLE APP STORE - Draft v 2 (mperves@apple.com 3).key	The entire document should be sealed because it reflects internal comments on a draft presentation to the European Commission.
DX-4170	Presentation titled “EEDAR - Gamer Segmentation 2018 Syndicated Report”	This document contains proprietary market research by a third-party firm. The document provide an in-depth analysis of market trends, as well as forecast for future performance in the technology sector. The report reflects the proprietary analyses of a third party, and public disclosure could unfairly prejudice that party. Apple has contacted the third-party firm to request permission to use the exhibit publicly; such permission has not been provided. <sup>17</sup>
DX-5525	Apple Arcade Worldwide Pricing	The entire document should be sealed because it reflects the development of Apple Arcade, including forward-looking strategies to maximize subscriber growth and promote developer content. This document also

<sup>16</sup> This document is also sealable for the reasons described in Category 1 – Non-public Financial Information and Category 4 – Third-Party Confidential Information.

<sup>17</sup> This document is also sealable for the reasons described in Category 4 – Third-Party Confidential Information.

(Cont'd on next page)

Document Sought to be Sealed	Document Title	Reason to Seal
		contains confidential third-party financial information. <sup>18</sup>
PX-0747	5/26/2020 Kantar CQ1'20 Smartphone KPIs (22 May 2020).key	The entire document should be sealed because it reflects competitively sensitive information.
PX-0850	1/5/2019 Email regarding Search Ad opportunities with attachment(s)	The entire document should be sealed because it reflects competitively sensitive information.
*PX-2172	6/14/2019 Email regarding [meeting summary] Apple Arcade Creative Strategy	The entire document should be sealed because it reflects competitively sensitive information.
*PX-2272	6/20/2018 Email regarding FY19 App Store roadmap review with attachment(s)	The entire document should be sealed because it reflects competitively sensitive information.
*PX-2295	iMessage (9/9/2020)	The entire document should be sealed because it reflects competitively sensitive information.
PX-2303	App_Store_Proposal_Update_11.06.2020_Privileged_and_Confidential.key	The entire document should be sealed because it reflects Apple's competitively sensitive information.
PX-2308	6/18/2019 iPad_Buyer_FY19-Q1_Report.key	The entire document should be sealed because it reflects Apple's competitively sensitive information.
PX-2309	2/13/2020 iPhone Buyer FY20-Q1 Report.key	The entire document should be sealed because it reflects Apple's competitively sensitive information.
*PX-2337	3/13/2020 email regarding ERB Spreadsheet, Deck, Details, Stats: 03.13.2020 with attachment(s)	The entire document should be sealed because it reflects Apple's competitively sensitive information.

<sup>18</sup> This document is also sealable for the reasons described in Category 4 – Third-Party Confidential Information.

Document Sought to be Sealed	Document Title	Reason to Seal
*PX-2340	7/25/2020 Email regarding Re: NYT story on Airbnb	The entire document should be sealed because it reflects Apple's competitively sensitive information.
PX-2343	10/25/2020 Email regarding Upcoming Quarterly App Store Reprice (October 2020) with attachment(s)	The entire document should be sealed because it reflects Apple's competitively sensitive information.
PX-2355	11/8/2020 Email regarding iOS, iPadOS, macOS System Reports for the week ending October 30, 2020 with attachment(s)	The entire document should be sealed because it reflects competitively sensitive information used for future business planning.
PX-2359	6/12/2020 Email regarding iOS & iPadOS System Reports for the week ending May 29, 2020 with attachment(s)	The entire document should be sealed because it reflects competitively sensitive information used for future business planning.
PX-2376	2/13/2018 Email regarding iPhone buyer survey report for FY18-Q1 with attachment(s)	The entire document should be sealed because it reflects competitively sensitive market research.
PX-2377	12/3/2020 iPhone owners- other Apple products and other devices use.key	The entire document should be sealed because it reflects competitively sensitive market research.
PX-2378	12/4/2020 Kantar ComTech USA CQ320 Mobile Report.key	The entire document should be sealed because it reflects competitively sensitive market research.
PX-2379	12/5/2020 iPhone Buyer FY20-Q4 - Apple and other Product Ownership (3 Dec 2020) legal.key	The entire document should be sealed because it reflects competitively sensitive market research.
PX-2389	9/10/2020 Email regarding Re: App Store analysis	The entire document should be sealed as reflecting competitively sensitive business planning and fraud prevention information.

Document Sought to be Sealed	Document Title	Reason to Seal
PX-2390	9/12/2020 Email regarding Re: Possible change to App Store fee structure - - risks and challenges	The entire document should be sealed as reflecting competitively sensitive business planning and fraud prevention information.
*PX-0750	9/15/2020 Email regarding Policy Update: (4.9) Escalate game streaming services and titles under 4.9	The entire document should be sealed because it reflects competitively sensitive information regarding future potential streaming game policy updates.

**CATEGORY 4 – THIRD-PARTY CONFIDENTIAL INFORMATION**

18. Fourth Apple seeks to seal information that reflects sensitive business information of its many third-party developers which, if revealed could impact those developers' competitive standing among fellow developers. Various Apple and Epic trial exhibits implicate confidential information of many of Apple's developer partners. Apple takes many steps, and undertakes substantial efforts, to safeguard private confidential data of its customers and developers and keeping that information confidential is important to its effectiveness

19. Below is a chart detailing the specific potential trial exhibits that are sealable under this category for the reasons explained herein.

Document Sought to be Sealed	Document Title	Reason to Seal
DX-3248	Document titled "2018 Global Games Market Report - Trends, Insights, and Projections Toward 2021" by Newzoo	This document contains the proprietary information of a third-party market research firm, and public disclosure could unfairly prejudice that party. Apple requested third-party permission to use the exhibit publicly; such permission has not been provided.

Document Sought to be Sealed	Document Title	Reason to Seal
PX-0191 <sup>19</sup>	4/10/2018 Email regarding Re: ERB Consideration - Amazon FreeTime Unlimited (1324809509)	This document contains an analysis by Apple's App Review team of a new subscription service by a third-party developer. In the course of analyzing the service, the App Review members discuss and disclose revenue information for other developers who may be affected by the proposed service. The discussion of both the proposed subscription service and the developers' revenue constitute confidential information, both about potential business strategies and about the amount of revenue certain developers derive from the App Store.
PX-2126 <sup>20</sup>	4/6/2018 Email regarding Re: ERB Consideration - Amazon FreeTime Unlimited (1324809509)	This document is a 2018 email chain discussing confidential information about a third-party developer's anticipated product launch on iOS and sensitive business plans related to the same. The document also contains specific, confidential third-party developer revenue data for various different apps, which are identified by name.
*PX-2333	7/30/2020 Email regarding Re: [HOT] Out-Of-Cycle ERB Request: 1496439256 Facebook Gaming	This document is a July 2020 email chain containing confidential information related to the particulars of a third-party developer's modifications to an app submission. Specifically, the Apple

<sup>19</sup> Apple is moving to provisionally seal PX-0191 which implicates Amazon's business. Apple is providing notice of the motion to Amazon so that it may support sealing of such documents if it so chooses.

<sup>20</sup> Apple is moving to provisionally seal PX-2126 which implicates Amazon's business. Apple is providing notice of the motion to Amazon so that it may support sealing of such documents if it so chooses.

<b>Document Sought to be Sealed</b>	<b>Document Title</b>	<b>Reason to Seal</b>
		employees on the chain note the technical changes that the developer made to its app.
*PX-0201	8/21/2018 Email regarding update on App Store Membership Subscriptions with attachment(s)	The document should be sealed because it reflects confidential third-party business plans.
*PX-0302	4/7/2017 Email regarding High Fraud Rate In Apps	The entire document should be sealed because it reflects the financial impact of fraud relating to numerous third-party developers and includes the names of individual wrongdoers.
*PX-0303	5/31/2017 Email regarding High Fraud Rate In Apps	The entire document should be sealed because it reflects the financial impact of fraud relating to numerous third-party developers and includes the names of individual wrongdoers
PX-0514	2/12/2020 Email regarding Re: New Mac and XCloud on iOS follow-up	The entire document should be sealed because it reflects confidential third-party information.
*PX-0520	3/8/2020 Email regarding Re: Project Mandril Notes - Activision Blizzard	The entire document should be sealed because it reflects confidential third-party information.
*PX-2061	8/20/2018 Email regarding Re: need Membership Subscriptions update for Phil and Eddy with attachment(s)	The entire document should be sealed because it reflects information regarding third-parties' future business plans concerning the potential use of a subscription payment model.
PX-2108	7/16/2019 Email regarding Re: Sling question	The entire document should be sealed because it reflects non-public information relating to a third party.
*PX-2116	11/19/2019 Email regarding Re: How does xCloud differ from Media Streaming Apps?	The entire document should be sealed because it reflects non-public information relating to a third party.

Document Sought to be Sealed	Document Title	Reason to Seal
*PX-2121	4/25/2019 Email regarding Fwd: IAP suppressed? with attachment(s)	The entire document should be sealed because it reflects non-public information relating to a third party.
*PX-2140	7/21/2018 Email regarding Netflix Presentation with attachment(s)	The entire document should be sealed because it reflects non-public information relating to a third party.
PX-2143	6/19/2019 Email regarding VPB [IS&T Design Update]: SAP & GBI Slides [Movie Purchase/Rental] with attachment(s)	The entire document should be sealed because it reflects non-public information relating to a third party.
*PX-2237	6/12/2018 Email regarding Re: Follow Up	The entire document should be sealed because it reflects third-party developer's revenue information and sources for downloads.
*PX-2240	8/21/2018 Email regarding update on App Store Membership Subscriptions with attachment(s) (cover email was withheld for privilege)	The document should be sealed because it reflects confidential third-party business plans.
*PX-2262	5/17/2017 Email regarding Re: Out-Of-Cycle ERB Request: 1156018161 SubHub - Find, monitor and cancel your subscriptions	The entire document should be sealed because it reflects competitively sensitive third-party information.
PX-2311	4/3/2020 Email regarding Re: [EXTERNAL] Xbox Game Streaming on iOS	The entire document should be sealed because it reflects confidential third-party information.
*PX-2313	2/5/2020 Email regarding xCloud ERB Topics	The entire document should be sealed because it reflects confidential third-party information.
*PX-2326	7/9/2020 Email regarding FB Gaming App on iOS with attachment(s)	The entire document should be sealed because it reflects confidential third-party information.
*PX-2327	9/15/2020 Email regarding Policy Update: (4.9) Escalate game streaming services and titles under 4.9 with attachment(s)	The entire document should be sealed because it reflects confidential third-party information.

<b>Document Sought to be Sealed</b>	<b>Document Title</b>	<b>Reason to Seal</b>
*PX-2328	4/27/2020 Email regarding Re: [EXTERNAL] Multiple Binary Approach	The entire document should be sealed because it reflects confidential third-party information.
*PX-2342	9/14/2020 Email regarding RE: [EXTERNAL] Checking in / xCloud on iOS	The entire document should be sealed because it reflects confidential third-party information.
PX-2360	1/29/2020 Email regarding RE: [EXTERNAL] Re: 3P - Xbox Game Pass	The entire document should be sealed because it reflects confidential business planning information of a third-party developer.
PX-2361	3/13/2020 Email regarding RE: [EXTERNAL] Xbox Console Streaming	The entire document should be sealed because it reflects confidential business planning information of a third-party developer.
*PX-2380	4/20/2020 Email regarding RE: [EXTERNAL] Re: Multiple Binary Approach with attachment(s)	The entire document should be sealed because it reflects confidential business planning information of a third-party developer.
PX-2897	3/5/2015 Email regarding AFC review of Finance organization with attachment(s)	The entire document should be sealed because it reflects personally identifiable information and detailed employment history about certain Apple employees.
PX-2907	9/18/2019 Attracting Quality Game Devs.key	The entire document should be sealed because it reflects a third party's competitively sensitive confidential business planning information.
PX-2913	8/23/2019 Email regarding WWDR Games Intern Final Presentation with attachment(s)	The entire document should be sealed because it reflects a third party's competitively sensitive confidential business planning information.

Document Sought to be Sealed	Document Title	Reason to Seal
PX-2914	8/26/2019 Email regarding Re: WWDR Games Intern Final Presentation with attachment(s)	The entire document should be sealed because it reflects a third party's competitively sensitive confidential business planning information.
PX-0462	11/4/2020 Email regarding Re: Call to Sundar -- no longer necessary	The entire document should be sealed because it reflects third-party information.

20. I have met and conferred in good faith with counsel for Epic, including by telephone, in an effort to narrow the documents and testimony that the parties propose to maintain under seal. This process has resulted in narrowing the amount of designated confidential material. Apple will continue to meet and confer with Epic regarding redactions where possible.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on May 3, 2021 at San Francisco, California.

/s/ Rachel S. Brass  
Rachel S. Brass